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AUG 30 2006

## OFFICE OF PETITIONS

KIA SILVERBROOK  
SILVERBROOK RESEARCH PTY LTD  
393 DARLING STREET  
BALLMAIN 2041 AU AUSTRALIA

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OFFICE OF PETITIONS

In re Application of :  
Paul Lapstun et al. : ON PETITION  
Application No. 09/505,003 :  
Filed: February 15, 2000 :  
Attorney Docket No. SP05US :

This is a decision on the petition filed May 23, 2006, to withdraw the holding of abandonment of the above-identified application, which is treated under 37 CFR 1.181.

The petition is DISMISSED.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181," or, as explained in more detail below, "...under 37 CFR 1.137(a)" or (b). This is not a final agency decision.

The above-referenced application was held abandoned on December 29, 2003, for failure to timely reply to the Notice of Non-Compliant Amendment mailed November 24, 2003. Accordingly, a Notice of Abandonment was mailed March 24, 2006.

The Notice of Non-Compliant Amendment set a one month period for reply. Petitioner contends that a reply was faxed to the USPTO in response to the Notice of Non-Compliant Amendment mailed November 24, 2003. A review of the file reveals that an amendment (response) was received on January 21, 2004, however the response was filed one month after the due date. A four month extension of time was also filed to make the response timely however, the extension of time request was not filed until April 7, 2005, which was outside of the maximum period obtainable. In order for the extension of time to have extended the period for reply to the Notice of Non-Compliant Amendment, it would have to have been filed by April 2004. Therefore, neither the response filed January 21, 2004 nor the extension of time filed April 7, 2005 were timely and thus the application was properly abandoned.

In view thereof, the holding of abandonment will not be withdrawn and the notice of abandonment will not be vacated.

Petitioner may wish to file a petition to revive under 37 CFR 1.137(a) or (b). Section 1.137(b) now provides that where the delay in reply was unintentional, a petition may be

filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof;
- (2) the petition fee as set forth in 37 CFR 1.17(m) (\$675.00);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and
- (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

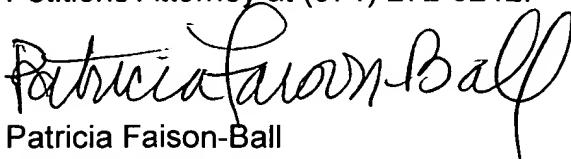
The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

By FAX: (571) 273-8300

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.

  
Patricia Faison-Ball  
Senior Petitions Attorney  
Office of Petitions